SIKKIM

GOVERNMENT GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No: 23/LD/P/2008 **Date: 29.07.2008**

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 28th day of June, 2008 is hereby published for general information:-

THE SIKKIM ONLINE GAMING (REGULATION) ACT, 2008
(Act No. 23 of 2008)

AN
ACT

to provide for the control and regulation of online gaming through electronic or non-electronic formats, and to impose a tax on such games, in the State of Sikkim.

Be it enacted by the Legislature of Sikkim in the Fifty-ninth Year of the Republic of India as follows:-

Short title, extent and commencement **1.** (1) This Act may be called the Sikkim Online Gaming (Regulation) Act, 2008.

(2) It extends to the whole of Sikkim.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

Definitions **2.** In this Act, unless the context otherwise requires:-

(a) "Act" means the Sikkim Online Gaming (Regulation) Act, 2008;

(b) "Appellate Authority" means the State Government or such authority as may be appointed by the State Government;

(c) "Authorized Officer" means any person or persons appointed by the State Government for the purpose of the Act;

(d) "Online Games" means all or any games of chance or a combination of skill and chance, including but not limited to Poker, Roulette, blackjack or any game, played with cards, dice or by means of any machine or instrument for money or money's worth, as may be prescribed from time to time;

(e) "Company" means a body corporate, and includes firm or other association of individuals duly constituted and registered under the provisions of the Registration of Companies Act Sikkim1961;

(f) "Government" means the State Government of Sikkim;

(g) "Gross Gaming Yield" means the total amount of all bets or stakes made, and the price of all chances sold, less the value of all winnings and prizes due, in the course of the Online Gaming during the period in question;

(h) "Instruments of Gaming" means and includes any article used or intended to be used as a subject, and accessory or means of gaming, any document used or intended to be used as a register or record or evidence of gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming;

(i) "Licence" means a licence granted by the State Government under the provisions of the Act for the purpose of running Online Games and Sports Games, including its organization, management or promotion and negotiation or receipt of bets;

(j) "Licensee" means any person/company/firm who has been granted a licence to install and operate Online Games and Sports Games including installing and maintaining an Online Gaming server;

(k) "Online Gaming" means any gaming, where any player enters or may enter the game or takes or may take any step in the game or acquires or may acquire or may acquire a chance in any lottery, by means of a telecommunication device including the negotiating or receiving of any bet by means of a telecommunication device;

(l) "Online Gaming Server" means any main frame computer or set of computers, installed or maintained by the Licensee, at a central location in the State that accepts, processes, stores and validates a lottery, wager/transaction and otherwise manages, monitors and controls the entire system;

(m) "Online Gaming Website" means the internet domain registration or URI, address of the Licensee through which Online Gaming is conducted

(n) "Penalty" means a fine imposed by the State Government or any authority for the breach or contravention of any of the rules made hereunder and on conviction before a court of competent jurisdiction;

(o) "Public Place" includes a place to which the public have or any permitted to have access, including any internet website), whether on payment or otherwise;

(p) "Sports Gaming" means games involving the prediction of the results of sporting events and placing a bet on the outcome, in part or in whole, of such sporting event;

(q) "State" means the State of Sikkim.

Licencing of Online Gaming and Sports Gaming and exemption under law.

3. (1) All Notifications or Instructions or Orders issuedfrom time to time pertaining to gaming or wagering or betting shall not apply to Online Games licensed under this Act or to any Online Game played, organized or the exhibited at such Online Gaming website(s).

(2) No Online Games shall be played, organized or exhibited to any person at any public place, except through Online Gaming website) in respect of which licence is granted in accordance with the provisions of this Act and such licence is in force.

Application forLicence for Online Gaming and grant or refusal of such Licence.

4. Any person desiring to obtain a licence shall make an application in writing to the State Government,in such form and manner as may be prescribed On receipt of such application, the State Government may, after making such inquiry as it considers necessary, by order in writing, either grant the licence or refuse to grant the licence without assigning any reasons

Provided that, where the State Government refuses to grant a licence, it shall put on its record a brief statement of the reasons for such refusal.

Duration of Licence.

5. (1) A licence, unless it is cancelled or surrendered, shall remain in force for such period, not exceeding 5 years,as may be specified in it.
The holder of a licence may surrender the licence by notice in writing to the Tourism Department.
(2) The cancellation, surrender or expiry of a licence shall not affect any liability for anything done or omitted to be done before the date on which it ceases to have effect.

Licence Fees.

6. (1) An applicant for the licence shall pay to the State Government such amount as may be prescribed as application fee for the grant of the licence.
(2) The licensee shall pay to the State Government, at such intervals and in such manner as prescribed, a levy, to be known as "online gaming levy", amounting to such amount as may be notified from time to time.
(3) The Licensee shall pay to the State Government a renewal fee of such amount as may be prescribed not later than five years from the date on which the Licence was specified.

Variation and Transfer of Licence.

7. (1) The State Government may, on application by the Licensee or of its own motion vary the licence by adding a prescribed description of online gaming to, or deleting a description of online gaming from, the descriptions specified in the licence.
(2) The State Government may, on application by the licensee or of its own motion, vary or cancel any condition specified in the licence.
(3) A variation of a licence or of a condition of a licence,made otherwise than on application by the Licensee shall not have effect until the expiration of 21 days from the date on which notice of it is given to the applicant, or where an appeal is made, until the appeal is abandoned or determined.
(4) The Department may, on an application by the Licensee, transfer the licence to a person specified in the application.
(5) Such a transfer shall be endorsed on the licence.

Assignment of Licence.

8. The Licence shall not be capable of being assigned in any form or in any manner.

Renewal/refusal to renew.

9. The State Government may, on application made to it, renew the licence granted under this Act, on payment of the fee prescribed for renewal of a license or refuse to renew any such license without assigning any reasons, butthe reasons for such refusal shall be stated on record.

Marketing and promotion.

10. (1) The Licensee shall, with intimation to the State government, conduct regular promotional activities,including registration bonus, bonus deposits and free play. For the purpose of calculating Gross Gaming Yield all such promotional or free bets or stakes shall be excluded.
(2) The Licensee shall, with prior approval of the State government conduct tournaments and competitions for its players. Such tournament shall be held either online through the authorized website or at physical locations anywhere in the world. The Licensee shall be responsible for obtaining the necessary approvals from the appropriate authorities at locations where such tournament is to be held.
(3) The Licensee shall, with intimation to the State government, offer its online games licensed under this Act, to any other person/company through the website and branding of such person/company. For the purposes of calculating Online Gaming Levy, the Gross Gaming Yield of the Licensee shall include the Gross Gaming Yield of each such person/company.

Power to suspend or cancel licenses.

11. (1) The State Government may, at any time, after giving the holder of any license under this Act a reasonable opportunity of being heard, suspend or cancel the license on any one or more of the following grounds,namely:
(i) That there has been a breach of any of the conditions subject to which the licence was granted.
(ii) That the holder of the licence has contravened any of the provisions of this Act or the rules made there under.
(2) Whenever a licence is suspended or cancelled, the State Government shall record a brief statement of the reasons for such suspension or cancellation and furnish a copy thereof to the person whose licence has been suspended or cancelled.

Penalty for contravention ofconditions of licenses.

12. Without prejudice to the provisions of the last preceding Section, if the holder of any licence under this Act or any person acting on his behalf has committed a breach of any of the conditions of the licence, he shall on conviction, be punished with such a fine as may be prescribed.

Licence holder to keepaccounts and submit the same to government or authorized officer.

13. The holder of a License under this Act shall keep accounts relating to online gaming in such manner and submit to the State Government or to an officer authorized by the State Government in this behalf a statement of accounts in such form and at such intervals as may be prescribed. Such accounts shall in particular show the money paid by way of stakes for every online game and such other particulars as may be prescribed.

Penalty for failure to keep and submit accounts.

14. If any person liable under the preceding Section to keep accounts or to submit statement of accounts fails to keep accounts or to submit statement of accounts as required by that Section or keeps accounts or submit statements of accounts which are false and which he either knows or believes to be false or does not believe to be true, he shall, on conviction, be punished with such fine as may be prescribed.

Best Judgment assessment in certain cases.

15. Where an officer authorized by the State Government in this behalf is not satisfied about the correctness or completeness of the accounts kept by the licensee or where the licensee fails to submit any statement of accounts as required by this Act, the said officer shall after giving a reasonable opportunity to the licensee to be heard and after taking into account all relevant material which he may have gathered, make the assessment of the levy payable by the licensee to the best of his judgment and call upon the licensee by order in writing to pay the amount of levy so assessed on or before such date as may be specified in the order.

Penalty for contravention of conditions of licence or of rules by persons playing Online Games and exhibition of conditions of licence by licensee.

16. (1) If any person, other than the Licensee while playing any online game at the approved website,licensed under this Act commits a breach of any of the conditions of the licence as exhibited,or of the rules to be observed in playing such games, he shall on conviction be punished with fine as may be prescribed.

(2) The Licensee shall exhibit at the approved website, the conditions subject to which licence is granted to him.

Offences by Companies.

17. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible, to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in such sub-section where an offence under this Act has been committed with the consent or connivance proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For this purpose of this Section:

"Director" in relation to a firm means a partner in the firm.

(3) All such offences shall be trialed in the Court of Judicial Magistrate.

Compounding of offences.

18. (1) The State Government or any officer authorized by it in this behalf may, either before or after the institution of proceedings for any offence punishable under this Act or any rules made there under, accept from any person charged with such offence by way of composition of the offence such sum not exceeding double the maximum amount of fine to which he is liable on conviction for such offence, as may be determined by the State government or the authorized officer, as the case may be.

(2) On payment of such sum as may be determined, no further proceedings shall be taken against the accused person in respect of the same offence.

Power to require production of accounts or to inspect accounts.

19. The State Government or any officer authorized by it in this behalf may, for the purposes of this Act,at all reasonable times-

(1) require the licensee to produce before it or him accounts or other documents or to furnish any other information, or;
(2) inspect the accounts of the licensee.

Power of entry and search.

20. (1) It shall be lawful for any police officer, not below the rank of Deputy Superintendent of Police, authorized the State government in this behalf by general or special order in writing;

(i) to enter, if necessary, by force, whether by day or night, or with such assistants as he considers necessary, at any premises where he has reasonable cause to believe that any provision of this Act or the rules made there under are or are being or are likely to be contravened or a breach of any of the conditions of the licence is or is likely to be committed;

(ii) to search the place and the persons whom he may find therein;

(iii) to take into custody and produce before a Judicial Magistrate all such persons as are concerned or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists having been concerned with any contravention or breach referred in clause (i), and;

(iv) to seize all things found therein which are intended to be used or are reasonably to have been used in connection with contravention or breach.

(2) All searches under this Section shall be made in accordance with the provisions of Code of Criminal Procedures, 1973.

Offences to be cognizable and bailable.

21. All offences under this Act shall be cognizable and bailable.

Protection of action taken in good faith.

22. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the Government or any other person exercising any powers or discharging any functions or performing any duties under this Act for anything in good faith done or intended to be done under this Act or any rule or order made there under.

Power to make rules.

23. (1) The State government may, by notification in the Official Gazette, and subject to the condition of previous application, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(i) The online casino games and sports games, for the purpose of the Act and the rules to be observed in playing such games;

(ii) The form and manner of making application for the licence and the fees to be paid for its grant or renewal and the conditions subject to which it may be granted;

(iii) The manner of keeping accounts relating to Online Games, the other particulars to be shown in the accounts, and the form in which and the intervals at which they shall be submitted to the State Government, or to the authorized officer;

(iv) The restrictions or conditions with regard to the age or other conditions of the persons who may be employed for Online Gaming, or who may be permitted to play online games or otherwise take part in the organization or exhibition of such games;

(v) The other restrictions or conditions with regard to the admission of the participants and the fees, if any, to be charged for their admission;

(vi) The types of notices to be exhibited and the manner in which they are to be exhibited on the onl8ine gaming website;

(vii) The restrictions or conditions with regard to the advertisements pertaining to Online gaming;

(viii) The restrictions or conditions with regard to providing credit facilities by the licensee to the participants of online gaming and the prohibition or regulation of participation by proxy in the online games;

(ix) Any other matter which is required to be or may be prescribed.

Rules made shall be laid before each house of the State Legislature.

24. Every rule made under this Act shall be laid as soon as may be after it is made before the House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before they expiry of the session in which it is so laid or the session immediately following, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

By Order.

R.K. PURKAYASTHA (SSJS)
LR-cum-Secretary
Law Department.
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